IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11300 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMAD HANIF GULAM MUSTAFA HAFEZI

Versus

DIST MAGISTRATE

Appearance:

MR BA SURTI for Petitioner

MR HH PATEL for Respondent No. 1, 2 and 4

None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/01/2001

ORAL JUDGEMENT

1. Challenge has been made by the petitioner by this petition under Article 226 of the Constitution to the order of the District Magistrate dated 13-10-2000 under which the petitioner was ordered to be detained under

section 3 and 5 of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980.

2. Learned counsel for the petitioner challenging that order raised the following contentions:

(i) Legible copies of the documents at page No.183, 185, 187, 239, 261, 285, 383, 415 to 454 and 467 have not been supplied to the petitioner.

(ii) Translation either in Gujarati or Hindi of the documents at pages No,29, 31, 59, 61, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 207, 211, 213, 215, 217, 219, 223 to 251, 253, 291, 407 to 413, 415, 417 to 453, 493, and 495 has not been supplied to the petitioner. In support of this contention, learned counsel for the petitioner placed reliance on the two decisions of the Hon'ble Supreme Court in the case of Mohd. Zakir vs. Delhi Administration reported in AIR 1982 SC 696 and in the case of Pawanammal vs.State of Tamilnadu reported in AIR 1999 SC 618.

(iii) There is considerable delay made by the Union of India in deciding the representation of the petitioner filed by him against the impugned order.

(iv) The State Government failed to forward the report of the approved order and the ground of detention forthwith to the Union of India.

(v) The detaining authority has not considered the lesser drastic remedy available under section 437 of Cr.P.C..

3. Learned counsel appearing for the respondents No. 1, 2 and 4 supported the impugned order.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. I have gone through the documents at pages mentioned in the first contention raised by the learned counsel for the petitioner. All the documents are legible and this grievance made by the learned counsel for the petitioner is wholly untenable and unjustified. Specifically reference has been made to document at page No.261. This document is legible in toto except that in column "PARTICULARS" there appears to a rubber seal which

may not be 100% legible, but the substance of the matter has to be considered and if we go by that only on the ground that this rubber seal may not be fully legible, the detention order cannot be quashed and set aside. Moreover, learned counsel for the petitioner has failed to show what was the relevancy of this rubber seal in the matter and more so to raise this defence.

6. Reply to the special civil application has been filed on behalf of the District Magistrate, Surat as well as the Union of India. Learned counsel for the petitioner does not dispute that the translation of the document mentioned at pages give out in the second contention have been furnished to the petitioner after he filed his representation against the detention order. So it is not the case where the translation of the English documents were not furnished to the petitioner.

7. Learned counsel for the petitioner contended that the petitioner does not know English. In the petition, the petitioner has not mentioned what are his qualifications. On being put by the Court, learned counsel for the petitioner fairly submitted that he does not know what qualifications, the petitioner has acquired. Before such a contention is raised by a person who has been ordered to be detained for his activities which are prejudicial to maintenance of supply of essential commodities, he has to come up with all the fairness before the Court. Before raising such a contention, it is expected from the petitioner first to disclose to the Court what qualification he possesses. That has not been done. Leaving apart all these things, the translated copies of the document have been admittedly furnished to the petitioner after representation and only on this ground, the detention order cannot be quashed and set aside. Reliance placed by the learned counsel for the petitioner on the two decisions of the Hon 'ble Supreme Court are hardly of any help to him in the facts of this case. Each case has to be decided on the basis of its facts.

Re. Third Contention.

8. The representation of the petitioner dated 21-10-2000 which is in Gujarati was received by the Central Government on 23-10-2000 and in the concerned section on 24-10-2000. These facts are not disputed by the petitioner as rejoinder to reply filed by the Union of India, is not there on the record of this special civil application nor it is a case of the petitioner that rejoinder has been filed. The State Government was

requested to furnish English version of the representation of the petitioner by the Central Government vide its telegram dated 24-10-2000. The Sate Government was reminded on 1-11-2000 to send English version of the representation. The English version of the representation was received in the concerned department of the Central Government on 7-11-2000 and after considering the representation along with other relevant records, the same was rejected on 9-11-2000 and it was conveyed to the petitioner through jail authorities on 10-11-2000 by telegram. In the facts of this case, it is difficult to accept that the Central Government has made any unreasonable delay in deciding the representation filed by the petitioner. Expeditiously, the representation filed by the petitioner has been decided by the Central Government. Whatever delay is there, it has been caused because the State Government had not send the English version of the representation to it.

Re. Fourth Contention.

9. From reply of the Central Government, it is clear that the order of detention of the petitioner made by the District Magistrate concerned was approved by the State Government on 24-10-2000. The report thereof was sent by the State Government to the Central Government vide letter dated 24-10-2000 which was received in that department on 30-10-2000. In view of these undisputed facts, this contention that the State Government failed to forward the report of the approved order to the Central Government and grounds of detention forthwith, is wholly untenable.

10. Re. last contention raised, it is suffice to say that it is also wholly untenable. The District Magistrate has filed his affidavit and in para-26, he made a statement on oath that each and every aspect including lesser drastic remedy available to department has been considered and thereafter subjective satisfaction arrived at that the petitioner is required to be preventively detained. I do not find any ground not to accept this statement made on oath by the District Magistrate, Surat, - detaining authority.

11. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. In the facts of this case, no order as to costs.

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